



# **Board of Adjustment**

## **Meeting Agenda**

March 18, 2014

immediately following the Planning Board meeting at 7:00pm  
Council Chambers, 201 S Main St

Invocation

1. Approve minutes of the January 21, 2014 meeting
2. Side Yard for Graham HFA (VR141). Request of Attorney for Graham HFA, LLC for a variance from the side yard setback for an existing building on property located at 611 W Whitsett St (GPIN 8874875827).

*A complete agenda packet is available at [www.cityofgraham.com](http://www.cityofgraham.com)*

CITY OF GRAHAM  
BOARD OF ADJUSTMENT  
January 21, 2014

There was a meeting called of the Board of Adjustment on Tuesday, January 21, 2014 at 7:00 pm following the Planning Zoning Board meeting in the Graham Municipal Building. Board members present were as follows: Bill Teer, Dean Ward, Bonnie Blalock and Ricky Hall. Michael Benesch was absent. Staff members present were Melissa Guilbeau, City Planner, Darcy Sperry, Zoning Enforcement Officer and Martha Johnson, Zoning/Inspections Technician.

Chairman Ricky Hall called the meeting to order and explained the function of the Board.

Invocation was given by Ricky Hall.

Ricky Hall proceeded to ask if anyone wishing to speak will need to come forward and be sworn in. Martha Johnson, Notary Public proceeded to swear them in.

2. Side Yard Variance for Quality Oil Awning (VR132). Request of Andy Sayles for a variance from the side yard setback for a vending awning on property located at 1101 S Main Street (GPIN 8883262967). Melissa Guilbeau said this variance request is from the required side yard width abutting a street which is 20 feet in the B-2 zoning district. Per Ms. Guilbeau the stated purpose of the applicant is the variance does not impose a hazard nor impede traffic flow at the proposed location and the vending awning is set back from the current sidewalks that property was required to install. Ricky Hall asked why the awning wasn't caught before the C.O. was issued. Ms. Guilbeau said we were not aware of the vending awning until after it was constructed.

Andy Sayles of 4325 Tree Brook Court Winston Salem, N.C. spoke first representing Quality Oil. During recent renovations he said Quality Oil had fixed up the old awning and moved it to the corner because the current position was located in the parking area. Mr. Sayles also gave pictures to the Board of Adjustment members to review. Mr. Sayles stated that with safety concerns this was the most logic and out of the way of traffic location for the awning. Bill Teer asked Mr. Sayles if he had received any direct complaints about the awning from anyone in the area. Mr. Sayles stated he had received no complaints at all and apologized for doing this work without checking first with the City of Graham because it was an oversight on Quality Oil's part.

Ernie Rhymer of 1540 Silas Creek Parkway Winston Salem, N.C. spoke next representing Quality Oil. Mr. Rhymer also felt it was in the best place for safety reasons and he felt they had went beyond what was expected from them especially now that the property is approximately half the size from when they started in 1972. Mr. Rhymer said they did an excellent landscaping job to the facility. He said Quality Oil does take pride in their looks and presentation to any community they go into and hoped the Board would consider the variance for Quality Oil.

Ricky Hall said with no further information this hearing would be closed and would allow discussion for the Board.

Dean Ward asked if the original drawings showed the vending awning for the TRC or in the building permitting process. Melissa Guilbeau said it didn't indicate the location of this vending awning. Dean Ward stated that he hopes the Board could make this work for Quality Oil especially since the property is now half the size today that it was originally. Also Quality Oil had no say about the State taking some of their property over the years in order to widen the roads.

Bill Teer made a motion to approve this variance, seconded by Bonnie Blalock. All voted in favor. Melissa Guilbeau asked the Board to elaborate in their findings for staff. Dean Ward stated that this variance being granted should only apply to the canopy and structure as it stands today and not any future development. Bill Teer made an amended motion and all voted in favor.

The following five Findings of Fact and four Conclusions of Law were adopted with the motion:

### **FINDINGS OF FACT**

1. The property that is the subject of this variance request, 1101 S Main St, is zoned General Business (B-2) and is located in the S Main St/Hwy 87 Overlay District.
2. The property contains a convenience store and gasoline pumps. It also contains a canopy structure located over a vending area, which was erected without site plan or building permit approvals.
3. The minimum side yard width abutting a street in the B-2 zoning district is 20 feet, as shown in Section 10.245 of the *City of Graham Development Ordinance*.
4. The canopy structure is located approximately five feet from the property line next to Rogers Rd, according to a site plan drawing submitted with the variance application. This is less than the 20 feet required by the *Development Ordinance*.
5. An application for a variance was filed with the City Planner on December 12, 2013. According to the application, the "applicant believes the variance does not impose a hazard nor impede traffic flow at proposed location. Lot is not large enough to locate vending awning at another location on site. Vending awning is setback from the current sidewalks that property was required to install."

### **CONCLUSIONS OF LAW**

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

*Under the strict application of the ordinance, the canopy structure would not be permitted because it would not meet the minimum side yard width abutting a street, which is 20 feet, since it is located approximately five feet from the property line.*

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

*The lot is roughly rectangular and measures approximately 125 feet wide by 170 feet deep. It includes roughly 0.47 acres, is fairly level and is located on the corner of two streets.*

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

*The canopy structure was erected without site plan or building permit approvals.*

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

*The requested variance will permit a structure within the required side yard abutting a street.*

## DECISION

For the above reasons, the Board of Adjustment **grants** the variance that is the subject of this application, **with the following condition:**

- This variance shall apply only to the canopy structure as it stands today, and shall not apply to any future development on the property or to the property as a whole.

3. Melissa Guilbeau stated this was an appeal by Johnny Ray Pulliam from a Notice of Violation issued by the Zoning Enforcement Officer on December 6, 2013 for junk vehicles on property located at 123 Florence Street (AP141). Ms. Guilbeau said staff offers Timeline of events as Exhibit A as told by the Zoning Enforcement Officer and references several attachments that are all the records of the case. Staff also has provided a draft Resolution for the Board to consider when making its decision.

Darcy Sperry, Zoning Enforcement Officer, spoke stating she received the original complaint regarding vehicles in violation located at 123 Florence Street. Ms. Sperry also disclosed that she had received a voicemail from Bill Teer Wednesday January 15, 2014 stating that he had driven by the property and the vehicles had been moved. Ms. Sperry verified that same day the vehicles were still on the property. January 21, 2014 Ms. Sperry received two calls from neighbors stating that a vehicle had been moved from the driveway to the rear yard behind the fence. Ms. Sperry took additional pictures and shared with the Board. Ms. Sperry said there are three vehicles there instead of two. Ms. Sperry stated it was her interpretation of the City of Graham junk vehicle ordinance that these vehicles in the back corner of the property are in violation of our junk vehicles ordinance.

Mr. Teer asked if the vehicles had been moved from the original spot and Ms. Sperry responded no. She said when it was first brought to her attention the fence was not there. Mr. Pulliam asked if he could put up a fence but Ms. Sperry told him it wouldn't correct the violation because it was

put up after she received the complaint.

Johnny Pulliam of 123 Florence Street spoke next. Mr. Pulliam stated that he had put up a fence to keep the vehicles from being seen and he didn't realize at the time they were a nuisance until Ms. Sperry notified him by mail. Mr. Pulliam said he has a problem with the vehicles is that you can't see them and why is the City of Graham making him move them if they aren't visible. Mr. Pulliam doesn't understand that reasoning and he felt like he did make an effort to make the situation better, he did move one vehicle to the backyard with the other ones and covered them with tarps. Mr. Pulliam asked why they are classified as abandoned vehicles because there isn't any grass grown up around them. Mr. Pulliam feels he has done a reasonable effort.

Bill Teer asked Mr. Pulliam what he was doing with them. Mr. Pulliam said he was making one truck from two trucks. Mr. Teer asked if he had any complaints and Mr. Pulliam said he had none until November 2013.

Dean Ward asked if all the vehicles have doors on them and Mr. Pulliam stated there is one that is junk status and that is the blue truck. Mr. Pulliam said this vehicle was going but he needed more time. Dean Ward asked if these vehicles have doors and do they have glass in them and Mr. Pulliam said yes they all do. Mr. Ward asked if all the vehicles run and Mr. Pulliam stated the blue vehicle does not run. Mr. Ward asked Mr. Pulliam if these vehicles would pass North Carolina inspections. Mr. Pulliam said the blue vehicle will not. Dean Ward said there are several remedies that could fix Mr. Pulliam's problem. Mr. Ward stated that tags and insurance might be cheaper than building a garage that Mr. Pulliam had mentioned. Mr. Ward said the Board is trying to help Mr. Pulliam find a solution and come into compliance with the City of Graham. Mr. Ward asked if Mr. Pulliam had another location he could move the vehicles and Mr. Pulliam replied no. Mr. Pulliam again stated that his point was the vehicles weren't visible and why is it a violation if it can't be seen. Mr. Ward asked Mr. Pulliam if he got a copy of the violation report and in that report did it tell him what the violation was with these vehicles. Mr. Pulliam answered yes it had several different things. Mr. Pulliam stated he doesn't have any other options.

Mr. Ward asked Ms. Sperry if Mr. Pulliam had worked with her promptly and she replied yes. Ms. Sperry said Mr. Pulliam is currently working on a fence, but the fence only has one side. The vehicles are not enclosed and there is a potential problem if someone wanders on to the property, especially if it is a child.

Ricki Ray of 121 Florence Street who lives beside Mr. Pulliam spoke next. Ms. Ray said over the years she has seen an increase from one to four added vehicles to the property. Her suggestion was to use a storage facility. Ms. Ray asked the Board to please enforce the existing ordinance. She also stated that Mr. Pulliam's wife said that the cars are on the back lot which he doesn't own.

Ricky Hall closed the hearing at this point.

Dean Ward stated that he felt this does qualify as a nuisance vehicle under the definitions in the City of Graham's Ordinance book specifically #1 and #9. The City of Graham has given him

every opportunity to bring it into compliance and Mr. Ward said he does see where Mr. Pulliam has tried to come into compliance by putting up some fences and a new tarp but that will not bring it into compliance. Mr. Ward said the blue vehicle with the door open must be a collection point for water going in there and possibly has rodents and mosquitoes in it and he feels it fits every aspect of our ordinance as nuisance vehicles and Mr. Hall agreed with him.

Dean Ward made a motion to deny this appeal because the blue vehicle fits with our ordinance that it is a nuisance vehicle and probably all three vehicles do also. Mr. Pulliam doesn't want to come into compliance with the City of Graham by putting the vehicles in his garage, removing them from the property or potentially putting tags and insurance on them. Ricky Hall seconded the motion, all voted in favor of denial of the appeal.

### **FINDINGS OF FACT**

1. The property that is the subject of this appeal, 123 Florence St, contains a single family detached dwelling.
2. The City's Zoning Enforcement Officer received an anonymous complaint about junk vehicles on the property and made the determination that the appellant was in violation of Article VI of the City's Code of Ordinances.
3. The City's Zoning Enforcement Officer sent a Notice of Violation to the appellant on November 18, 2013 and a Notice of Pre-Towing on December 5, 2013.
4. The appellant submitted an appeal on January 2, 2014.
5. On January 9, 2014, a letter notifying the appellant and adjacent property owners of the hearing was deposited in the US Mail and a sign was posted on the property.
6. On January 13, 2014, the City Planner transmitted to the Board of Adjustment all the papers constituting the record upon which the action appealed from was taken.

### **CONCLUSIONS OF LAW**

1. The vehicles in question meet the definition of "nuisance vehicle" contained in Article VI of the City's Code of Ordinances, specifically items (1) and (9) of the definition.
2. The City has given appellant ample opportunity to correct the violation.

### **DECISION**

For the above reasons, the Board of Adjustment **affirms, in whole**, the Notice of Violation that is the subject of this appeal.

1. Bill Teer made a motion to approve the minutes from the December 17, 2013, second by Ricky Hall. All voted aye.

There being no further business, the meeting was adjourned.

Respectfully Submitted,  
Martha Johnson, Secretary



# STAFF REPORT

Prepared by Melissa Guilbeau, City Planner

## Side Yard Variance for Graham HFA (VR141)

**Type of Request:** Variance

### Meeting Dates

Board of Adjustment on March 18, 2014

### Contact Information

E. Lawson Brown, Attorney for Graham HFA, LLC  
PO Box 2958, Burlington, NC 27216  
336-227-8851; elb@vernonlaw.com

## Summary

This is a request for a variance from the required side yard, which is 8 feet in the R-7 zoning district, for an existing building. The stated purpose of this request is as follows: "The building and its location were approved by the town and built in its current location. The side set back at eight feet is encroached by between seven tenths of a foot (0.7') to four tenths of a foot (0.4')"



### Location

611 W Whitsett St

GPIN: 8874875827

### Current Zoning

Residential (high density) (R-7)

### Current Use

Nursing Home

### Surrounding Zoning

R-7

### Surrounding Land Uses

Single family houses

Attached is a **draft of a Resolution for the Board to consider** when making its decision. This draft Resolution should be modified as the Board sees fit and is only provided by staff as a template.





# Application for a VARIANCE

P.O. Drawer 357  
201 South Main Street  
Graham, NC 27253  
(336) 570-6705  
Fax (336) 570-6703  
www.cityofgraham.com

Applicants are encouraged to consult with the City Planner before submitting this application.

## Property on which a Variance is sought

Street Address: 611 Whitsett Drive

Tax Map#: 134877 GPIN: 8874875827

Current Zoning District(s):

- R-7    R-9    R-12    R-15    R-18
- R-MF    R-G    C-R    C-MXR
- B-1    B-2    B-3    C-B    C-MXC
- O-I    C-O-I    I-1    I-2    C-I

Overlay District, if applicable:

- Historic    S Main St/Hwy 87    E Harden St/Hwy 54

Current Use: Nursing Home

Property Owner: Graham HFA, LLC

Mailing Address: P.O. Box 2958

City, State, Zip: Burlington, NC 27216

## Applicant

Property Owner   Other Attorney For

Name: Graham HFA, LLC

Mailing Address: P.O. Box 2958

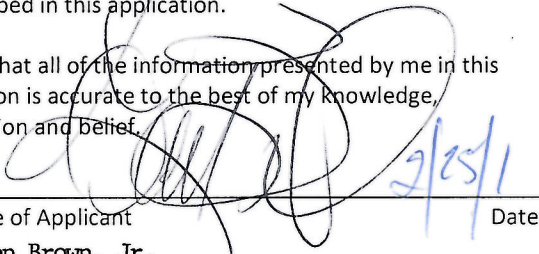
City, State, Zip: Burlington, NC 27216

Phone # (336) 227-8851

Email: elb@vernonlaw.com

I, the applicant, hereby petition the Board of Adjustment for a variance from the strict letter of the *Development Ordinance*, as described in this application.

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.



Signature of Applicant \_\_\_\_\_ Date 2/25/14

E. Lawson Brown, Jr.  
Attorney for Applicant

## Purpose of Variance Request

Describe the purpose of this variance request. *What are you trying to do that the Development Ordinance is prohibiting?* If necessary, attach a plot plan or other illustration.

The building and its location were approved by the town and built in its current location. The side set back at eight feet (8 ft.) is encroached by between seven tenths of a foot (.7') to four tenths of a foot (.4').

## Nature of Variance Request

List the specific provision(s) of the *Development Ordinance* from which you are seeking a variance (for example, side yard setback).

Side set back of eight feet (8'), per attached

**RECEIVED**  
FEB 25 2014  
CITY OF GRAHAM  
INSP. / P.Z.

Office Use Only. DEVID# VR141



## Board of Adjustment Resolution of Findings of Fact, Conclusions of Law and Decision

The Board of Adjustment for the City of Graham, North Carolina, having held a public hearing on **March 18, 2014** to consider **case number VR141**, submitted by **E. Lawson Brown, Attorney for Graham HFA, LLC** of PO Box 2958, Burlington, NC 27216, for a **variance from the side yard setback for an existing building at 611 W Whitsett St**, and having heard all the evidence and arguments presented at the hearings, makes the following FINDINGS OF FACT and draws the following CONCLUSIONS OF LAW:

### FINDINGS OF FACT

*NOTE: These Findings of Fact were prepared by staff and should be modified by the Board as it sees fit.*

1. The property that is the subject of this variance request, 611 W Whitsett St, is zoned Residential (high density) (R-7).
2. The property contains a nursing home which was erected in 1999. A building permit was issued on December 17, 1998 and a Certificate of Occupancy was issued on February 29, 2000. The building permit indicated the zoning at the time as R-7 and the side setback as 8 feet.
3. The minimum side yard width in the R-7 zoning district is 8 feet, as shown in Section 10.245 of the *City of Graham Development Ordinance*.
4. The existing building is located 7.3 to 7.6 feet from one of the side property lines, according to the applicant. This is less than the 8 feet required by the *Development Ordinance*.
5. An application for a variance was filed with the City Planner on February 25, 2014. That same day, the City Planner emailed the applicant advising them that the City would consider this situation to be a nonconforming building and asked for the applicant to elaborate on the purpose of the variance request. The applicant replied on February 26<sup>th</sup> that the request is being made because the property is being sold and the variance request is to clear title.

[insert additional Findings of Fact, if any are made]

### CONCLUSIONS OF LAW

*The Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following:*

*NOTE: These Conclusions of Law were prepared by staff and should be modified by the Board as it sees fit.*

1. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

*The applicant requests this variance in order to clear title for sale of the property.*

2. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

*The building was erected with a building permit from the City and passed all inspections, as evidenced by the issuance of a Certificate of Occupancy. The hardship does not appear to be peculiar to the property*

3. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

*The building permit that resulted in the existing building was issued to Paradigm HFA, LLC, with Carroll Builders, Inc. as general contractor.*

4. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

*This variance, if granted, will not change the existing building, which was permitted and issued a Certificate of Occupancy as it stands.*

## **DECISION**

*In exercising its powers, the Board of Adjustment may grant or deny a variance and may impose any appropriate conditions on the variance, provided that the conditions are reasonably related to the variance. The concurring vote of four-fifths of the Board shall be necessary to grant a variance.*

For the above reasons, the Board of Adjustment [grants/denies] the variance that is the subject of this application.

[insert additional description of the Decision or any appropriate conditions, if necessary]

Staff recommends that, if granted, the following condition be imposed:

- This variance shall apply only to the existing building as it stands today, and shall not apply to any future development on the property or to the property as a whole.

The resolution reflects the decision of the Board of Adjustment, made the 18<sup>th</sup> day of March, 2014.

Attest:

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Ricky Hall, Chair

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Martha Johnson, Secretary